

May 2016

Summary of IDEM Rulemakings

Notices and Continuations

Title 326 Air Pollution Control Division

Rulemaking Action: References to the Code of Federal Regulations (CFR) - [LSA Document #16-208](#)

Purpose: **Notice of Public Hearing**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for 326 IAC 1-1-3 updates to references to the Code of Federal Regulations (CFR) to bring it up to date with the July 1, 2015, edition.

Background: "References to the Code of Federal Regulations" at 326 IAC 1-1-3 indicates the yearly edition of the CFR that is applicable to federal regulations that have been incorporated by reference throughout 326 IAC, unless a previous edition is specified in a specific rule. By updating the reference to the CFR at 326 IAC 1-1-3, the Environmental Rules Board is incorporating by reference the latest version of the CFR, with the exception of those regulations most recently published in the Federal Register (FR). The latest version of the CFR contained in 326 IAC 1-1-3 is July 1, 2013. Since that date, several new federal regulations have been promulgated that are not reflected in the current version of 326 IAC. By updating the reference date to July 1, 2015, 326 IAC will be consistent with those regulations that the federal government promulgated between July 1, 2013, and June 30, 2015.

History: First Notice of Comment Period: May 25, 2016 – June 24, 2016
Notice of Public Hearing: May 25, 2016

Inquiries: Additional information regarding this rulemaking action can be obtained from Keelyn Walsh, Rules Development Branch, Office of Legal Counsel, (317) 232-8229, (800) 451-6027 (toll-free), or kwalsh@idem.in.gov.

Next Step: **Public Hearing/Adoption**

Adoption/Public Hearing tentatively scheduled for August 10, 2016 at 1:30 p.m., at the Indiana Government Center South, 302 West Washington Street, Conference Center Room 22, Indianapolis, Indiana.

Title 327 Water Pollution Control Division

Rulemaking Action: Revised Total Coliform Rule - [LSA Document #14-59](#)

Purpose: **Second Notice of Comment Period/Notice of Public Hearing**

Amends 327 IAC 8-2, 327 IAC 8-2.1, 327 IAC 8-2.3, 327 IAC 8-2.4, and 327 IAC 8-2.5 to add the federal requirements of the Revised Total Coliform Rule (TCR) found at 40 CFR 141, as amended by the Federal Register (FR) on February 13, 2013 at 78 FR 10346, and February 26, 2014 at 79 FR 10668.

Background: The U.S. EPA published final revisions to the 1989 TCR in the Federal Register (FR) on February 13, 2013 (78 FR 10346), and technical corrections to the final rule revisions were published on February 26, 2014 (79 FR 10668). The Revised Total Coliform Rule (RTCR) offers a meaningful opportunity for greater public health protection beyond the 1989 TCR. Under the RTCR, there is no longer a monthly maximum contaminant level (MCL) violation for multiple total coliform detections. Instead, the revisions require public water systems (PWSs) that have an indication of coliform contamination in the distribution system to assess the problem and take corrective action that may reduce cases of illnesses and deaths due to potential fecal contamination and waterborne pathogen exposure. The final rule revision also updates provisions in other rules that reference analytical methods and other requirements in the 1989 TCR. These include minor revisions being made in the Groundwater Rule (GWR) and the Stage 2 rule to correct items U.S. EPA believes need corrected to make IDEM's rules as stringent as the federal rules. The revisions are in accordance with the 1996 Safe Drinking Water Act (SDWA) Amendments that require U.S. EPA to review and revise, as appropriate, each national primary drinking water regulation not less often than every six years. These revisions also conform to the SDWA provision that requires any revision to "maintain, or provide for greater protection of the health of persons". As with the 1989 TCR, the RTCR applies to all PWSs.

History: First Notice of Comment Period: March 4, 2014 - April 4, 2016
Second Notice of Comment Period: May 11, 2016 – June 10, 2016
Notice of Public Hearing: May 11, 2016

Inquiries: Additional information regarding this rulemaking action can be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel, (317) 232- 8635, (800) 451-6027 (toll-free), or mstevens@idem.in.gov.

Next Step: Preliminary Adoption/First Public Hearing tentatively scheduled for August 10, 2016 at 1:30 p.m., at the Indiana Government Center South, 302 West Washington Street, Conference Center Room 22, Indianapolis, Indiana.

Title 329 Solid Waste Management Division

Rulemaking Action: Underground Storage Tanks - [LSA Document #16-204](#)

Purpose: **First Notice of Comment Period**

In order to maintain state program approval, 329 IAC 9 must be amended to be at least as stringent as 40 CFR 280. Further, IDEM must submit the rule changes to U.S. EPA to be evaluated within three years of the effective date of the changes U.S. EPA published on July 15, 2015 (80 FR 41565). IDEM proposes to amend 329 IAC 9 to be at least as stringent as 40 CFR 280 while ensuring compliance with applicable Indiana law and rules. This may include clarifications to the existing requirements of 329 IAC 9. Clarifications may include: adding necessary definitions, reviewing when and how information is submitted to the department by owners and operators and considering compliance schedules for implementation of new requirements.

Background: The Indiana Department of Environment Management (IDEM) implements a United States Environmental Protection Agency (U.S. EPA) approved underground storage tank (UST) program. An UST is a tank or a combination of tanks used to contain an accumulation of regulated substances, the volume of which, including the volume of any

underground pipes connected to the tank or combination of tanks, is at least 10% beneath the surface of the ground. The federal government regulates UST owners and operators through Subtitle I of the Solid Waste Disposal Act (SWDA), but allows for states to maintain their own programs. In order for an UST program to receive state program approval, it must comply with 42 U.S.C. Subchapter 9 and corresponding federal regulations, including 40 CFR 280, which set standards for UST ownership and operation, and 40 CFR 281, which regulates state program approval. Approval was granted to Indiana's program on July 12, 2006.

History: First Notice of Comment Period: May 18, 2016 - June 17, 2016

Inquiries: Additional information regarding this rulemaking action can be obtained from Lauren Aguilar, Rules Development Branch, Office of Legal Counsel, (317) 234-8559, (800) 451-6027 (toll-free), or laguilar@idem.in.gov.

Next Step: **Second Notice of Comment Period**

Proposed Rules (and Readoptions)

Currently, no IDEM related rules are posted within the Indiana Register (IR) for this grouping.

Final Rules (and Readoptions)

Title 329 Solid Waste Management Division

Rulemaking Action: Restrictive Covenants - [LSA Document #14-254\(F\)](#)

Purpose: **Rule Effective**
Adds 329 IAC 1-2 concerning requests for restrictive covenant modifications and associated cost recovery measures for remediation projects described in IC 13-23, IC 13-24, IC 13-25-4, and IC 13-25-5.

Background: A modification of a restrictive covenant may be needed for a variety of reasons, including a change in site conditions or proposed use, property subdivision, or an advancement in science and technology. Before the commissioner of IDEM may authorize a subsequent recording, IDEM must review the modification request and reassess the status of the site to ensure the change will not increase the potential hazards to human health or the environment. The review of a modification request has placed a burden on IDEM resources and staff. In response, the 2014 Indiana General Assembly passed legislation at Public Law (P.L.) 220-2014, Section 8 adding IC 13-14-2-9 that provides guidance on how to request a modification of a restrictive covenant, when a modification should occur, and directs the Environmental Rules Board (ERB) to adopt rules providing for the recovery of administrative and personnel expenses incurred by the state in evaluating modifications of restrictive covenants. IDEM plans to set cost recovery measures for the evaluation of requests for modification of a restrictive covenant. For consistency, IDEM is considering the cost recovery measures used in related programs at IDEM, such as the voluntary remediation program (VRP). This could include using actual costs and accounting for IDEM staff hours worked using a fixed

amount per hour. The hourly rate may be based upon and adjusted by the Midwest region urban zone consumer price index (CPI) obtained at <http://www.bls.gov/cpi/>.

History:	First Notice of Comment Period:	July 16, 2014 - August 15, 2014
	Second Notice of Comment Period:	August 12, 2015 - September 11, 2015
	Notice of First Hearing:	August 12, 2015
	Date of First Hearing:	October 14, 2015.
	Proposed Rule:	December 23, 2015
	Notice of Second Hearing:	December 23, 2015
	Date of Second Hearing/Final adopted:	February 10, 2016
	Effective	May 28, 2016

Inquiries: Additional information regarding this rulemaking action can be obtained from Lauren Aguilar, Rules Development Branch, Office of Legal Counsel, (317) 234-8559, (800) 451-6027 (toll-free), or laguilar@idem.in.gov.

Next Step: This rule became effective on May 28, 2016.

Emergency Rules

Title 326 Air Pollution Control Division

Rulemaking Action: Sulfur Dioxide Monitoring Emergency Rule- [LSA Document #16-205\(E\)](#)

Purpose: **Adoption of Emergency Rule**
Temporarily amends 326 IAC 7-3-1 to revise the applicability for ambient sulfur dioxide monitoring and 326 IAC 7-3-2 to add provisions for continuing monitoring and responsibility for existing monitors. Statutory authority: IC 13-14-8-1.

Background: This emergency rule will ensure that SO₂ monitors currently operated by sources in SO₂ nonattainment areas will continue to be operated until the area is redesignated to attainment and approval is obtained to discontinue the monitors. To ensure the monitors continue to be operated, the applicability section is changed to apply to all sources currently operating a monitor in a SO₂ nonattainment area and that were responsible for the majority of the emissions of SO₂ when the area was designated. The sources would be required to continue operating the SO₂ monitors until the area is designated to attainment and approval to discontinue the monitoring is received from the commissioner.

History:	Adoption:	May 11, 2016
	Notice of Emergency Rule:	May 18, 2016
	Effective Emergency Rule:	May 12, 2016

Inquiries: Additional information regarding this rulemaking action can be obtained from Christine Pedersen, Rules Development Branch, Office of Legal Counsel, (317) 233 -5684, (800) 451-6027 (toll-free), or cpederse@idem.in.gov.

Title 327 Water Pollution Control Division

Rulemaking Action: Emergency Revised Total Coliform Rule - [LSA Document #16-206\(E\)](#)

Purpose: **Adoption of Emergency Rule**

Temporarily amends 327 IAC 8-2, 327 IAC 8-2.1, 327 IAC 8-2.3, and 327 IAC 8-2.5 to add the federal requirements of the Revised Total Coliform Rule found at 40 CFR 141, as amended by the Federal Register (FR) on February 13, 2013 at 78 FR 10346, and February 26, 2014 at 79 FR 10668. The original emergency document, LSA Document #16-87(E), posted at DIN: 20160217-IR-327160087ERA, effective February 12, 2016, expires May 12, 2016. Statutory authority: IC 13-14-8-1.

Background: IDEM initiated a rulemaking to adopt the federal RTCR into state rules at 327 IAC 8 with a first notice posted in the Indiana Register on March 5, 2014. The draft rule is in progress, but the state rule will not be final adopted and effective before the federal deadline of April 1, 2016. Therefore, the emergency rule incorporates the federal requirements into state rules so that the state rules are not deficient in meeting federal requirements as of April 1, 2016. The original emergency rule was filed on February 12, 2016, and expires on May 12, 2016. This extension of the emergency rule is needed to continue the effectiveness of the requirements until the regular rulemaking is complete.

History:	First Adoption	February 17, 2016
	Second Adoption:	May 11, 2016
	Notice of Emergency Rule:	May 18, 2016
	Effective Emergency Rule:	May 12, 2016

Inquiries: Additional information regarding this rulemaking action can be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel, (317) 232- 8635, (800) 451-6027 (toll-free), or mstevens@idem.in.gov.

Title 329 Solid Waste Management Division

Rulemaking Action: Coal Combustion Residuals Emergency Rule - [LSA Document #16-207\(E\)](#)

Purpose: **Notice of Emergency Rule**

Temporarily amends 329 IAC 10-3-1(8), 329 IAC 10-3-1(9), and 329 IAC 10-9-1 to incorporate by reference the federal requirements for the operation and closure of a coal combustion residuals impoundment. The original emergency document, LSA Document #16-88(E) posted at DIN: 20160217-IR-329160088ERA, effective February 17, 2016, expired May 17, 2016.

Background: This emergency rule was previously adopted by the Environmental Rules Board at the February 10, 2016 meeting. IDEM is currently working to amend 329 IAC 10, but the rulemaking process is not yet complete making a second adoption of this emergency rule necessary. This emergency rule addresses the operation of any coal combustion residuals (CCR) impoundment operated by electric utilities or independent power

producers subject to new federal regulations found at 40 CFR 257, Subpart D, promulgated by the United States Environmental Protection Agency (U.S. EPA), that became effective October 19, 2015. This emergency rule extends the original emergency rule.

History:	First Adoption	February 17, 2016
	Second Adoption:	May 11, 2016
	Notice of Emergency Rule:	May 18, 2016
	Effective Emergency Rule:	May 12, 2016

Inquiries: Additional information regarding this rulemaking action can be obtained from Lauren Aguilar, Rules Development Branch, Office of Legal Counsel, (317) 234-8559, (800) 451-6027 (toll-free), or laguilar@idem.in.gov.

Adoptions – Environmental Rules Board – May 11, 2016

Title 327 Water Pollution Control Division

Rulemaking Action: CAFO and CFO Reference Update - [LSA Document #16-3](#)

Purpose: Preliminary Adoption

This proposed rule amends 327 IAC 15-16 and 327 IAC 19, concerning concentrated animal feeding operations (CAFO) and confined feeding operations (CFO), to:

- update references to the Indiana Natural Resources Conservation Service (NRCS) Nutrient Management Conservation Practice Standards Codes 313, 360, 521A, 521B, 521C, 590, 633, and 656, and the construction specification for concrete construction;
- update the Code of Federal Regulations (CFR) incorporated into the rules to the 2014 edition;
- correct formatting, typographical errors, and references to websites.

Background: Many of the updated NRCS standards are already in use by the regulated community. IDEM reached out to a cross section of stakeholders and, based on the information gathered, there is no appreciable difference in cost to a regulated entity to use the newly updated standards. However, currently in order to use them a variance must be granted, and this comes at a cost. Updating the standards in the rule eliminates this burdensome and time consuming administrative process resulting in a savings to the regulated community and IDEM.

History:	First Notice of Comment Period:	January 20, 2016
	Notice of First Hearing:	January 20, 2016
	Preliminary Adoption/First Public Hearing:	May 11, 2016

Inquiries: Additional information regarding this rulemaking action can be obtained from Lauren Aguilar, Rules Development Branch, Office of Legal Counsel, (317) 234-8559, (800) 451-6027 (toll-free), or laguilar@idem.in.gov.

Next Step: **Third Comment Period (TBD)**

Title 329 Solid Waste Management Division

Rulemaking Action: Solid Waste Facility Operator Certification Program [LSA Document #14-111](#)

Purpose: **Final Adopted**

IDEM initiated this rulemaking to update the solid waste facility operator certification requirements in 329 IAC 12. The rulemaking proposes to offer more flexibility for certification and recertification course content, allow the use of continuing education for recertification, extend the length of time between recertification submittals, reorganize sections throughout the rule, and clarify and update rule language. These rule amendments will provide more consistent, accurate, flexible, and current requirements.

Background: Indiana Code 13-15-10 authorizes the Environmental Rules Board (board) to adopt rules for the training, examination, certification, and recertification of solid waste disposal facility operators. The rules at 329 IAC 12 ensure that solid waste facilities have a certified and trained operator, certification providers obtain and maintain accreditation, and operators stay current with industry trends through regular training and education for recertification. The rulemaking proposes amendments to 329 IAC 12 to improve the rule language and provide more flexibility for solid waste facility operator certification.

History:	First Notice of Comment Period:	April 16, 2014 - May 16, 2014
	Second Notice of Comment Period:	July 22, 2015 - August 21, 2015
	Notice of First Hearing:	July 22, 2015
	Preliminary Adoption/First Public Hearing:	February 10, 2016
	Change in Notice of Public Hearing:	September 9, 2015
	Change in Notice of Public Hearing:	January 6, 2016
	Final Adoption/Second Public Hearing:	May 11, 2016

Inquiries: Additional information regarding this rulemaking action can be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, (317) 234-5345, (800) 451-6027 (toll-free), or dwatts1@idem.in.gov.

Next Step: **Effective (TBD)**

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